

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
v.)	Criminal Docket No. 06-10230-NG
)	
HUGH BRIAN HANEY,)	
Defendant.)	
_____)	

**UNITED STATES OPPOSITION TO THE DEFENDANT'S MOTION TO
AMEND THE CRIMINAL JUDGMENT BY REMITTING THE \$10,000 IN FINES
IMPOSED AS PART OF THE SENTENCE**

For the reasons set forth below, the United States respectfully requests that this Court deny the defendant's motion to remit his fine as this Court lacks jurisdiction to consider the defendant's motion.

BACKGROUND

On July 17, 2008, the defendant in the above-captioned matter plead guilty to conspiracy to possess with intent to distribute and to distribute oxycodone and possession with intent to distribute and distribution of oxycodone. Unnumbered Docket Entry dated July 17, 2008. On September 17, 2008, this Court issued judgment against the defendant. Docket Entry # 51. As part of the defendant's sentence, he was ordered to pay a \$10,000 fine. Id.

On September 24, 2008, the defendant filed a motion to remit the \$10,000 fine. As reasons for his motion, the defendant set forth, in part, the following:

As such, Haney, currently, has limited income to draw from with which to pay spousal and child support and pay this fine. A more important, but related, reason why Haney asks the Court to remit the fine is because the assets Haney will need to earn in the weeks and months ahead to pay the fine will come from the salary paid to him by Matthew 6. With these funds going to pay Haney, and, later, to

retire the fine, Matthew 6 will not be available to use these funds for the housing, education, and medical needs of the orphan community that Matthew 6's *Watani* Project currently serves in Freetown and other parts of Sierra Leone.

Docket Entry # 52, p. 2. The defendant, however, did not provide any statutory authority for his motion.

ARGUMENT

Title 18 of the United States Code, section 3572, provides the following:

Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

- (1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;
- (2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule;
- (3) extend a date certain or an installment schedule previously ordered.

A petition under this section shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court. This section shall apply to all fines and assessments irrespective of the date of imposition.

18 U.S.C. § 3573. In the case at hand, the United States is not petitioning the Court to remit the criminal fine imposed by this Court; the defendant is. The statute does not provide the defendant with the authority to petition the Court to remit his criminal fine. Consequently, this Court lacks jurisdiction to consider the defendant's motion. United States v. Gonzalez, 248 F.3d 1128, 2000 WL 1872066 (C.A.1 (Puerto Rico) 2000)(Unpublished Opinion); United States v. Linker, 920 F.2d 1, 2 (7th Cir. 1990) (“The language of this section is plain and unambiguous. By its own terms, it applies strictly to the Government, and not to the defendants.”); and, United States v.

Heimbach, 808 F.Supp. 413, 416 (E.D.Pa. 1992) (Only the United States government may petition the Court to remit a fine.).

CONCLUSION

For all of the aforementioned reasons, the United states respectfully requests that this Court deny the defendant's motion to remit his criminal fine.

Respectfully submitted,

UNITED STATES OF AMERICA
By its attorneys

MICHAEL J. SULLIVAN
United States Attorney

Dated: October 2, 2008

By: /S/ Christopher R. Donato
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CERTIFICATE OF SERVICE

I hereby certify that the above-document was filed through the ECF system electronically to any registered participants and a paper copy was sent by mail to those indicated as non-registered participants.

Dated: October 2, 2008

/S/ Christopher R. Donato
Christopher R. Donato
Assistant U.S. Attorney